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**State of Wisconsin
Department of Children and Families**

EMERGENCY RULE

**Regulation of Rates Charged by Residential Care Centers for
Children and Youth, Child-Placing Agencies, and Group Homes**

DCF 52, 54, and 57

The Wisconsin Department of Children and Families orders the repeal of ss. DCF 52.46(5)(f)(note), 57.03, 57.12(8), 57.21, 57.37(11); the renumbering of s. DCF 54.01(4)(a); the amendment of ss. DCF 52.01, 52.03(23) and (note), 52.46(5)(f), 54.01(1) and (3), 54.04(1)(a), 54.06(title), ch. DCF 57(title), 57.01, 57.02(note), 57.05(1)(f), 57.12(3), 57.13(4), (5)(note), (10)(a)(note), (11)(note), 57.14(4)(a), (b), and (c)(intro.) and 3.(note), 57.15(2)(a)(note) and (c)(note), 57.27(1)(j) and (k), 57.33(1), 57.36(8), 57.37(8), 57.38(1)(g)(note), 57.42(4), 57.49(1)(note), 57.515(note), 57.58(2)(note) and (3); the repeal and recreation of ss. DCF 52.03(4), 52.11(2) and (6), 52.41(3), 52.42(1)(d) and (5)(a), 52.47(6)(b), 57.07 and (notes), 57.12(7), and 57.27(3); the creation of ss. DCF 52.03(19m), 52.11(18) to (24), 52.12(5)(cm) and (10), 52.42(ae), (am), (as), and (b)8., 52.47(6)(am), 52.555, 52.62(1)(c)17., ch. DCF 52 subch. IX, 52.64 to 52.69, 54.01(4)(a) and (gm), 54.02(3)(c)7., 54.06(4) to (80), 54.065 to 54.12, 57.04(9m), 57.045, 57.05(2)(p), 57.06(5), 57.075, 57.12(4m), 57.40(7), 57.425, 57.49(1)(im), ch. DCF 57 subch. VIII, and 57.60 to 57.65, relating to regulation of rates charged by residential care centers for children and youth, child-placing agencies, and group homes.

Finding of Emergency

The Department of Children and Families finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

2009 Wisconsin Act 28 directed the department to implement rate regulation effective January 1, 2011. Implementation was delayed and this rule is phasing-in rate regulation at the earliest feasible date.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 48.67 (intro.), (3) (b) and (d), 49.343 (4), and 227.11 (2) (a), Stats.

Statutes interpreted: Sections 48.67, 49.343, and 938.357 (4) (a) and (c) 1. and 2., Stats.

Related statute or rule: Sections 48.60, 48.61, 48.625, 49.34, 101.149, 101.647, 347.48, and 938.34 (4d), Stats.

Explanation of Agency Authority

Section 49.343, Stats., provides that the department shall establish the per client rate that a residential care center for children and youth or a group home may charge for its services, and the per client administrative rate that a child welfare agency may charge for the administrative portion of its foster care services. The department shall determine the levels of foster care under ch. DCF 56 to which rate regulation applies.

Section 49.343 (4), Stats., provides that the department shall promulgate rules to implement s. 49.343, Stats. Those rules shall include rules providing for all of the following:

- Standards for determining whether a proposed rate is appropriate to the level of services to be provided, the qualifications of a provider to provide those services, and the reasonable and necessary costs of providing those services.

- Factors for the department to consider in reviewing a proposed rate.
- Procedures for reviewing proposed rates, including procedures for ordering a rate when negotiations and mediation fail to produce an agreed to rate.

Section 938.357 (4) (a), Stats., provides that if the Department of Corrections (DOC) places a juvenile who is placed with DOC in a Type 2 juvenile correctional facility operated by a child welfare agency, DOC shall reimburse the child welfare agency at the rate established under s. 49.343, Stats. Section 938.357 (4) (c) 1., Stats., provides that if DOC places a juvenile who is placed with DOC in a Type 2 juvenile correctional facility operated by a child welfare agency and it appears that a less restrictive placement would be appropriate for the juvenile, the rate for the less restrictive placement would also be established under s. 49.343, Stats. Section 938.357 (4) (c) 2., Stats., provides that if a juvenile under the supervision of a county department under s. 938.34 (4d), Stats., is placed in a Type 2 residential care center, the rate for the placement is established under s. 49.343, Stats., and if there is a change in placement to a less restrictive placement, the rate for the less restrictive placement would also be established under s. 49.343, Stats.

Section 48.67 (intro.), Stats., provides that the department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, child care centers, foster homes, group homes, shelter care facilities, and county departments. Those rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees.

Section 48.67 (3) (b), Stats., provides that the department shall promulgate rules that require all staff members of a group home who provide care for the residents of the group home have current proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), Stats., achieved through instruction provided by an individual, organization, or institution of higher education that is approved under s. 46.03 (38), Stats., to provide such instruction.

Section 48.67 (3) (d), Stats., provides that the department shall promulgate rules that require all child welfare agencies that operate a residential care center for children and youth have in each building housing residents of the residential care center for children and youth when those residents are present at least one staff member who has current proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), Stats., achieved through instruction provided by an individual, organization, or institution of higher education that is approved under s. 46.03 (38), Stats., to provide such instruction.

Section 227.11 (2) (a), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

Summary of the Rule

This rule-making order affects ch. DCF 52, Residential Care Centers for Children and Youth; ch. DCF 54, Child-Placing Agencies; and ch. DCF 57, Group Foster Care.

Rate Regulation

Under this rule, the department will establish maximum rates that no group home, residential care center, or child-placing agency may exceed and will require that each individual program document that its rate is based on the reasonable and necessary costs of the services provided by that program.

For group homes and residential care centers, the regulated rate is a per client rate that each group home or residential care center may charge for costs associated with room, board, administration, service provision, and oversight of youth in the group home or residential care center. For child-placing agencies, the regulated rate is a per client administrative rate that each child-placing agency may charge for the administrative portion of its services for foster homes with a Level 3 or 4 certification under the foster care levels of care system in Emergency Rule 1050. The administrative rate is the difference between the rate charged by a child-placing agency to a purchaser of services for a foster home with a Level 3 or 4 certification and the rate paid by the child-placing agency to the foster parent for the care and maintenance of a child placed in the foster home.

Rate regulation is being phased in to apply to the per client rates that a residential care center or group home may charge for services provided July 1, 2011, to December 31, 2011, for a child who is first placed in a residential care center

or group home or who is placed in a new residential care center or new group home on or after July 1, 2011 and the per client administrative rates that a child-placing agency may charge for services provided July 1, 2011, to December 31, 2011, for services that the agency provides for a Level 3 or 4 foster home in which a child is first placed or a child is newly placed on or after July 1, 2011. This rule will apply to all group home and residential care center per client rates and child-placing agency per client administrative rates effective January 1, 2012.

To assist with determining the reasonable and necessary costs of providing services, the department will require that each group home, residential care center, and child-placing agency submit a cost and service report and an audit report for services provided in the previous year. For rates effective July 1, 2011, the deadline for submission of this information is April 29. The department will use the information submitted by April 29 to determine both 2011 and 2012 rates. In future years, the deadline for submission of the cost information will be July 1.

The department shall notify licensees of the per client rates that no residential care center or group home may exceed and the per client administrative rate that no child-placing agency may exceed for its services. For rates effective July 1, 2011, the department released the maximum allowable rates on March 1. For rates for services provided in 2012 and future years, the maximum allowable rates will be released no later than September 1 of the preceding year.

Each group home, residential care center, and child-placing agency licensee shall submit to the department a proposed rate for services to be provided for each program that the licensee operates. In reviewing a proposed rate submitted by a licensee, the department shall consider whether the proposed rate exceeds the maximum rate determined by the department, the program's most recent cost and service report, the program's most recent audit report, whether the program's reported costs are within a range of similar costs reported by other programs for similar items and services, the program's rate in previous years, and the factors listed in s. 49.343 (2) (b), Stats. For rates effective July 1, 2011, a licensee's proposed rate shall be submitted no later than April 29. For rates effective January 1, 2012, and future years, a licensee's proposed rate shall be submitted no later than October 1 of the preceding year.

If the department determines that a licensee's proposed rate is appropriate based on the listed factors, the department shall approve the proposed rate. If the department determines that a licensee's proposed rate is not appropriate, the department shall negotiate with a licensee to determine an agreed to rate. The department's approved rate following negotiations shall be based on the listed factors and additional relevant information presented during negotiations. For rates effective July 1, 2011, the department will notify licensees of their approved rate no later than June 1. For future years, the department will notify licensees of their approved rate no later than November 1 of the preceding year. A licensee who does not agree to the department's approved rate may request mediation and a contested case hearing under ch. 227, Stats.

In addition to the rate established under the rate regulation process, a licensee may request that a county pay an extraordinary payment for a specific child in care. A request for a child-specific extraordinary payment may be approved by the county and shall be reviewed by the department. A licensee may request an extraordinary payment for a child who has service needs that are not accounted for in the maximum allowable rate determined by the department and not paid for by another source. The extraordinary payment may not be used to cover expenses that are a disallowable cost under federal regulations and cost circulars. A licensee may not appeal the denial of a request for an extraordinary payment.

The department shall convene the rate regulation advisory committee under s. 49.343 (5), Stats., at regular intervals to consult with the department on items in s. 49.343 (5) (a) to (c), Stats.

Other Changes Affecting Residential Care Centers, Group Homes, and Child-Placing Agencies

Inspections, records, and requests for information. The rules provide that the department may visit and inspect a group home, child-placing agency, or residential care center. During this inspection, a licensee shall provide any documentation of operations requested by the department and any resident records requested by the department. A licensee shall respond promptly to requests for information from the department or any other governmental agency with statutory authority to see the information and shall ensure that information that the licensee or staff submits or shares is current and accurate. For group home and residential care center licensees, this provision also applies to requests and information submitted to or shared with a placing agency.

A group home, residential care center, or child-placing agency licensee shall maintain staff payroll records and retain the records for 5 years. A group home or residential care center licensee shall also maintain and retain written schedules of staff coverage that document the specific staff that worked each shift to meet the applicable staff-to-resident ratios.

A group home shall have written policies and procedures that indicate for each shift of resident care staff how all of the following will be documented:

- Staff arrival and departure times.
- Number and location of residents.
- Summary of each resident's behavior and program participation during the shift.

Financial records and audits. A group home, residential care center, or child-placing agency licensee shall arrange for an annual audit report by a certified public accountant. The licensee shall also establish and maintain an accounting system that accurately identifies income and disbursements for each resident or child by the cost categories that must be reported to the department for determination of rates.

Department memos. A licensee of a group home, residential care center, or child-placing agency shall register to receive department memos on child welfare licensing and child welfare policy by electronic mail.

Non-discrimination. A licensee of a group home, residential care center, or child-placing agency shall ensure that the group home, residential care center, or child-placing agency does not discriminate against a resident or child based on the resident's race or cultural identification, sex, sexual orientation, age, color, creed, ancestry, national origin, disability, political affiliations, or religious beliefs.

Other Changes Affecting Residential Care Centers and Group Homes

- Supervision of residents. Language on supervision of residents has been rewritten to emphasize supervision to ensure the safety and well-being of residents in addition to complying with minimal staff-to-resident ratios.
- Prohibited physical restraint. The rules incorporate the provisions of DSP Memo Series 2009-05 that was jointly issued by the Department of Health Services and the Department of Children and Families. It provides that resident care staff may not use any type of physical restraint on a resident unless the resident's behavior presents an imminent danger of harm to self or others and physical restraint is necessary to contain the risk and keep the resident and others safe. If physical restraint is necessary, the rules provide certain prohibited practices.
- Disaster plan. Each licensee shall file a disaster plan with the department and placing agency that would allow the department or placing agency to identify, locate, and ensure continuity of services to children under the placement and care responsibility or supervision of the placing agency who are displaced or adversely affected by a disaster. Disaster plans are required by the federal Child and Family Act of 2006.
- Child safety restraint systems. The rules incorporate the requirements of s. 347.48 (4), Stats.
- Carbon monoxide detectors. The rules incorporate the requirements in ss. 101.647 and 101.149, Stats., regarding carbon monoxide detectors. Effective February 1, 2011, s. 101.647, Stats., requires that a one- or two-unit building have a functional carbon monoxide detector installed in the basement and on each floor level, except the attic, garage, or storage area of each unit.
- Training in use of automated external defibrillator. The rules incorporate the requirements of s. 48.67 (3) (b) and (d), Stats.

Summary of Factual Data and Analytical Methodologies

The department developed this rule in conjunction with an advisory committee consisting of representatives of purchasers, county departments, the Bureau of Milwaukee Child Welfare, tribes, providers, consumers, and the Wisconsin Association of Family and Children's Agencies.

From fall 2009 to fall 2010, the department and the advisory committee were developing a policy to implement rate regulation effective January 1, 2011, with levels of care for group homes, residential care centers, and child-placing agencies that provide services for foster homes with a Level 3 to 5 certification. Each level of care would have an established rate and specific requirements regarding provision of care. In fall 2010, the department determined that we did not have sufficient information to implement that type of system. Implementation of rate regulation was delayed until July 1, 2011, and a simpler approach to rate regulation was developed without levels of care for providers.

Summary of Related Federal Requirements

- 48 CFR Part 31 provides contract cost principles and procedures under the federal acquisition regulation. Allowability of costs incurred by commercial organizations is determined in accordance with this provision.
- Allowability of costs incurred by nonprofit organizations is determined in accordance with OMB Circular A-122, *Cost Principles for Nonprofit Organizations*.
- Allowability of costs incurred by state, local, or federally-recognized tribal governments is determined in accordance with OMB Circular No. A-87, *Cost Principles for State and Local Governments*.
- 45 CFR Part 74 provides uniform administrative requirements for awards and subawards from the federal Department of Health and Human Services to institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations.
- 45 CFR Part 92 provides uniform administrative requirements for grants and cooperative agreements from the federal Department of Health and Human Services to state, local, and tribal governments.

The Legislative Audit Bureau has confirmed that the department is responsible for monitoring compliance with federal regulations and cost circulars by anyone to whom the department passes federal funds.

Comparison to Adjacent States

Illinois. Illinois has a levels of care system group homes and residential care centers. Most residential care is subject to a hybrid rate-setting system. The rules provide that the state reimburses providers through payment made according to standard reimbursement levels that are negotiated through contract. For performance residential programs, the state sets staffing ratios and agrees upon salaries for various types of employees with the provider. Food and laundry, building, and administrative costs are based on median historical costs and are capped. This calculation of reimbursable costs provides the provider with an amount of money that the provider has discretion to use.

Iowa. Iowa has established a weighted average rate for services providers offer. The weighted average rate was established in 1997. In 1998, existing providers had a one-time opportunity to negotiate their rates. The rates may only be changed if there is an across-the-board increase or decrease in rates. The Department of Human Services negotiates rates with a new provider or an existing provider adding an new service.

Minnesota. Rates for residential facilities are set by a negotiation process between the facility and the county where the facility is located. Once a rate is negotiated, the facility and the county enter into a contract and the facility send the contract paperwork to the state. Facilities are also required to submit cost information each year. When the reimbursement rate is calculated, the facilities are allocated a percentage of the rate for room and board, and a percentage of the rate for administration.

Michigan. Counties negotiate contracts with providers and the state approves the contracts.

Agency Contact Person

Ron Hermes, Director, Bureau of Permanence and Out-of-Home Care, Division of Safety and Permanence, (608) 267-3832, ron.hermes@wisconsin.gov.

Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Department of Children and Families, 201 E. Washington Avenue, P.O. Box 8916, Madison, WI, 53708-8916 or dcfpublichearing@wisconsin.gov. The comment deadline is May 19, 2011.

SECTION 1. DCF 52.01 is amended to read:

DCF 52.01 Authority and purpose. This chapter is promulgated under the authority of s. 48.67, Stats., to ensure that residential care centers for children and youth protect and promote the health, safety and welfare of residents, respect the rights of individual residents, provide the most appropriate conditions possible for each resident, help each resident develop socially acceptable patterns of behavior, develop resident treatment plans consistent with the state's permanency planning policy to support the integrity of the family, and help each resident return as quickly as possible to his or her family or attain another placement providing long-term stability. This chapter is also promulgated under the authority of s. 49.343, Stats., to establish the rate that a residential care center may charge for its services and to promote efficient provision of services.

SECTION 2. DCF 52.03 (4) is repealed and recreated to read:

DCF 52.03 (4) "County department" or "county" means a county department of social services under s. 46.215 or 46.22, Stats.; a county department of human services under s. 46.23, Stats.; or a county department under s. 51.42 or 51.437, Stats.

SECTION 3. DCF 52.03 (19m) is created to read:

DCF 52.03 (19m) "Placing agency" means a licensed private child-placing agency; county department with powers and duties under ss. 48.57 and 938.57, Stats.; the department; the Wisconsin department of corrections; or a licensed child welfare agency from another state authorized to place children in residential care centers.

SECTION 4. DCF 52.03 (23) is amended to read:

DCF 52.03 (23) "Residential care center for children and youth" or "residential care center" or "center" or "RCC" means a residential facility required to be licensed as a child welfare agency under s. 48.60, Stats., that provides treatment and custodial services for children, youth, and young adults ages 18, 19, or 20.

SECTION 5. DCF 52.11 (2) and (6) are repealed and recreated to read:

DCF 52.11 (2) DOCUMENTATION OF STAFFING. (a) Maintain all of the following records:

1. Written schedules of staff coverage that document the specific resident care workers and resident services case managers that worked each shift to meet the applicable staff-to-resident ratios in s. DCF 52.41 (3).

2. Staff payroll records.

(b) Retain records under par. (a) for 5 years and make all records immediately available upon request of the department.

(6) FINANCIAL RECORDS AND AUDITS. (a) Arrange for an annual audit report by a certified public accountant in accordance with department guidelines.

Note: For further information, contact the Department of Children and Families, Bureau of Finance, 201 E. Washington Avenue, P.O. Box 8916, Madison WI 53708-8916 or (608) 267-3905.

(b) Establish and maintain an accounting system that accurately identifies income and disbursements for each resident by the cost categories in the cost and service report in s. DCF 52.66 (1) (a).

(c) Be responsible for the secure and judicious use of the funds of the residential care center. Policies and practices shall be in accord with sound budgeting, disbursement, and audit control procedures.

(d) Maintain a system of business management and staffing to ensure complete and accurate accounts, books, and records are maintained.

(e) Provide the department with financial information about the residential care center upon request.

SECTION 6. DCF 52.11 (18) to (24) are created to read:

DCF 52.11 (18) INSPECTIONS. Allow the department to visit and inspect the center and be given unrestricted access to the premises. During this inspection, a licensee shall provide all of the following:

(a) Any documentation of center operations requested by the department.

(b) Any resident records requested by the department.

(19) REQUESTS FOR INFORMATION. Respond promptly to requests for information from the department, a placing agency, or any other governmental agency with statutory authority to see the information.

(20) CURRENT AND ACCURATE. Ensure that information that the licensee or center staff submits to or shares with the department, a placing agency, or any other governmental agency is current and accurate.

(21) EMERGENCY PROCEDURES. Have written procedures for handling an emergency including all of the following:

- (a) Calling in extra staff.
- (b) Securing the assistance of law enforcement or emergency medical personnel.
- (c) Alerting center staff and assigning roles and duties in response to the emergency.

(22) DISASTER PLAN. (a) File a disaster plan with the department and any placing agency that has placed a child in the center that would allow the department or placing agency to identify, locate, and ensure continuity of services to residents under the placement and care responsibility or supervision of the placing agency who are displaced or adversely affected by a disaster. The disaster plan shall include all of the following information:

1. Where a licensee, center staff, and residents would go in an evacuation, including one location in the nearby area and one location out of the area.
2. Phone numbers, electronic mail addresses, and other contact information for the licensee.
3. A list of items that the licensee or center staff will take if evacuated, including any medication and medical equipment for residents.
4. Phone numbers the licensee will call to check in with the department and placing agency.

(b) Review the disaster plan on a quarterly basis to ensure it is current and accurate. Document the quarterly review and provide the documentation to the department upon request.

(23) DEPARTMENT MEMOS. Register to receive department memos on child welfare licensing and child welfare policy by electronic mail. A licensee shall submit a new registration if the licensee's electronic mail address changes.

Note: Register at the department's website <http://dcf.wisconsin.gov/memos/signup.htm> and select Child Welfare Licensing and Child Welfare Policy Memos.

(24) NON-DISCRIMINATION. Ensure that the residential care center does not discriminate against a resident based on the resident's race or cultural identification, sex, sexual orientation, age, color, creed, ancestry, national origin, disability, political affiliations, or religious beliefs.

SECTION 7. DCF 52.12 (5) (cm) and (10) are created to read:

DCF 52.12 (5) (cm) A residential care center for children and youth shall have in each building housing residents when those residents are present at least one staff member who has current proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), Stats., achieved through instruction provided by an individual, organization, or institution of higher education that is approved under s. 46.03 (38), Stats., to provide such instruction.

(10) STAFF HOUSING. A residential care center may not house children of staff with residents.

SECTION 8. DCF 52.23 (note) is amended to read:

DCF 52.23 Note: Mail or fax written information of the above to: Department of Children and Families, Interstate Compact on Placement of Children, Division of Safety and Permanence, 1 West Wilson St. 201 E. Washington Avenue, P.O. Box 8916, Madison, WI 53708-8916. The fax number is (608) ~~264-6750~~ 266-5144 – attn. ICPC.

SECTION 9. DCF 52.41 (3) is repealed and recreated to read:

DCF 52.41 (3) STAFF-TO-RESIDENT RATIO. (a) In this subsection, "supervision" means guidance of the behavior and activities of a resident by a staff member to ensure the safety and well-being of the resident.

(b) The staff-to-resident ratios for staff providing supervision of residents shall be as follows:

1. '1:8 during waking hours.' A residential care center shall have at least one staff member awake and providing supervision for every 8 or fewer residents present in a program unit during waking hours.
2. '1:15 during sleeping hours.' A residential care center shall have at least one staff member awake and providing supervision for every 15 or fewer residents present in the program unit during sleeping hours. Each staff member shall be within hearing or call of residents being supervised without reliance on the use of electronic monitoring devices.
3. 'Congregate living area.' A licensee shall ensure that a staff member provides sight and sound supervision at all times in each congregate living area of the center when residents are present. In this subdivision, "congregate living area" means any area in a center used for living or recreation except a bedroom, bathroom, or hallway.

(c) The staff-to-resident ratios in par. (b) are the minimal staffing requirements for resident care staff. The number of resident care staff providing supervision shall be increased as necessary to meet the needs of residents and to ensure their safety and welfare.

Note: Section DCF 52.55 (1) (b) 1. requires that staff can safely evacuate all residents from the center in one trip for fire safety.

(d) No resident may be in a residential care center without supervision by a staff member.

(e) A licensee shall ensure that supervision is provided for each resident appropriate to the resident's age, maturity, behavior, and developmental level and sufficient to ensure the safety of all residents in the residential care center.

(f) Supervision of residents shall be by a staff member who meets or exceeds the qualifications of a resident care worker under s. DCF 52.12 (2) (e).

(g) An inexperienced resident care worker who is required to take the traineeship program s. DCF 52.12 (5) (g) may only be counted in the ratios in par. (b) if the trainee is working with an experienced resident care worker who meets the qualifications in s. DCF 52.12 (2) (e).

(h) A residential care center shall have at least one full-time equivalent resident services case manager under s. DCF 52.12 (1) (a) 3. for every 16 or fewer residents. A residential services case manager who is working less than full-time may have a maximum caseload that is the equivalent of 2.5 hours per week for each resident.

SECTION 10. DCF 52.42 (1) (d) and (5) (a) are repealed and recreated to read:

DCF 52.42 (1) (d) "Physical crisis intervention" means that a staff member physically intervenes with a resident when the resident's behavior presents an imminent danger of harm to self or others and physical restraint or physically enforced separation is necessary to contain the risk and keep the resident and others safe.

(5) CRISIS INTERVENTION. (a) A center staff member may not use any type of physical restraint or physically enforced separation on a resident unless the resident's behavior presents an imminent danger of harm to self or others and physical restraint is necessary to contain the risk and keep the resident and others safe.

SECTION 11. DCF 52.42 (5) (ae), (am), (as), and (b) 8. are created to read:

DCF 52.42 (5) (ae) A center staff member shall attempt other feasible alternatives to de-escalate a child and situation before using physical restraint or physically enforced separation.

(am) A center staff member may not use physical restraint or physically enforced separation as disciplinary action, for the convenience of center staff, or for therapeutic purposes.

(as) If physical restraint is necessary under par. (a), a center staff member may only use the physical restraint in the following manner:

1. With the least amount of force necessary and in the least restrictive manner to manage the imminent danger of harm to self or others.

2. That lasts only for the duration of time that there is an imminent danger of harm to self or others.

3. That does not include any of the following:

a. Any maneuver or technique that does not give adequate attention and care to protection of the resident's head.

b. Any maneuver that places pressure or weight on the resident's chest, lungs, sternum, diaphragm, back, or abdomen causing chest compression.

c. Any maneuver that places pressure, weight, or leverage on the neck or throat, on any artery, or on the back of the resident's head or neck, or that otherwise obstructs or restricts the circulation or blood or obstructs an airway, such as straddling or sitting on the resident's torso.

d. Any type of choke hold.

e. Any technique that uses pain inducement to obtain compliance or control, including punching, hitting, hyperextension of joints, or extended use of pressure points for pain compliance.

f. Any technique that involves pushing on or into a resident's mouth, nose, or eyes, or covering the resident's face or body with anything, including soft objects, such as pillows, washcloths, blankets, and bedding.

4. Notwithstanding subd. 3. f., if a resident is biting himself or herself or other persons, a center staff member may use a finger in a vibrating motion to stimulate the resident's upper lip and cause the resident's mouth to open and may lean into the bite with the least amount of force necessary to open the resident's jaw.

(b) 8. Physically enforced separation in a time-out room may not be used as a substitute for supervision of a resident who is at risk of running away.

SECTION 12. DCF 52.46 (5) (f) is amended to read:

DCF 52.46 Medications. (5) (f) Administration standards. In administering psychotropic medications, a center shall comply with requirements for administration of prescription medications in this section and clinically acceptable standards for good medical practice. ~~Conformance to guidelines of the department's division of care and treatment facilities for use and monitoring of the effects of psychotropic medications satisfies the requirement for clinically acceptable standards and for good medical practice.~~

SECTION 13. DCF 52.46 (5) (f) (note) is repealed.

SECTION 14. DCF 52.47 (6) (am) is created to read:

DCF 52.47 (6) (am) *Child safety seats.* No licensee or person acting on behalf of a licensee may transport any resident under the age of 8 years or less than 80 pounds in weight in any private motor vehicle unless the following conditions are met, as required in s. 347.48 (4), Stats.:

1. Each resident who is less than one year old or who weighs less than 20 pounds being transported in a vehicle shall be properly seated and restrained in a rear-facing individual child car safety seat in the back seat of the vehicle.
2. Each resident who is at least one year old but less than 4 years old or who weighs at least 20 pounds but less than 40 pounds shall be properly restrained in a forward-facing individual child car safety seat in the back seat of the vehicle.
3. Each resident who is at least 4 years old but less than 8 years old, who weighs at least 40 pounds but not more than 80 pounds, or who is 4 feet 9 inches tall or less, shall be properly restrained in a shoulder-positioning child booster seat.

SECTION 15. DCF 52.47 (6) (b) is repealed and recreated to read:

DCF 52.47 (6) (b) *Seat belts.* Each resident who is not required to be in an individual child car safety seat or booster seat when being transported shall be properly restrained by a seat belt, except as provided in s. 347.48 (2m), Stats., and ch. Trans 315. Seat belts may not be shared.

SECTION 16. DCF 52.555 is created to read:

DCF 52.555 *Carbon monoxide detector.* (1) A residential care center in a one-unit or two-unit building shall have a functional carbon monoxide detector installed in the basement and on each floor level, except the attic, garage, or storage area of each unit, in accordance with the requirements of s. 101.647, Stats.

Note: A one-unit building is a single family residence. A two-unit building is a duplex or two-flat.

(2) A residential care center in a building with at least 3 units shall have one or more functional carbon monoxide detectors installed in accordance with the requirements of s. 101.149, Stats.

SECTION 17. DCF 52.62 (1) (c) 17. is created to read:

DCF 52.62 (1) (c) 17. A proposed per client rate that the residential care center will charge for services provided in the current year and a proposed budget with the same cost categories as the department's cost and service report under s. DCF 52.66 (1) (a).

**SECTION 18. Chapter DCF 52 Subchapter IX—Rate Regulation and DCF 52.64 to 52.69 are created to read:
Subchapter IX—Rate Regulation**

DCF 52.64 *Rate determination.* (1) The department shall determine the maximum per client rate that each residential care center program may charge for costs associated with room, board, administration, service provision, and oversight of youth in the residential care center program based on the following:

- (a) A maximum per client rate determined by the department that no residential care center may exceed.
 - (b) A per client rate that the department determines is appropriate for each residential care center program based on the reasonable and necessary costs of the services provided by that residential care center.
- (2) A residential care center shall charge all purchasers the same rate for the same services.

DCF 52.65 *Disallowable costs.* (1) In determining rates under this subchapter, the department may not consider costs incurred for any purpose that is disallowable under applicable federal regulations and cost circulars, including 45 CFR Part 74, 45 CFR Part 92, 48 CFR Part 31, OMB Circular No. A-87, and OMB Circular A-122.

(2) A licensee may not use rate payments for any purpose that is disallowable under applicable federal regulations and cost circulars, including 45 CFR Part 74, 45 CFR Part 92, 48 CFR Part 31, OMB Circular No. A-87, and OMB Circular A-122.

DCF 52.66 *Rate methodology.* (1) COST AND SERVICE INFORMATION. Each year no later than July 1, a licensee shall submit the following information to the department:

(a) A cost and service report in which the licensee reports the residential care center's costs, types of services provided, and number of children served in the previous year. The report shall be submitted on a department-prescribed form.

Note: The cost and service report form is available at http://dcf.wisconsin.gov/childrenresidential/rate_regulation.htm.

(b) The residential care center's most recent audit report under s. DCF 52.11 (6) (a).

(c) Notwithstanding par. (a), a licensee who submits a cost and service report no later than April 29, 2011, under s. DCF 52.665 (3) is not required to submit another cost and service report in 2011.

Note: The Department will use the same cost and service report for both 2011 and 2012 rates.

(2) **MAXIMUM ALLOWABLE RATE.** Each year no later than September 1, the department shall notify licensees of the per client rate that no residential care center may exceed for services provided in the following calendar year.

(3) **PROPOSED RATES.** Each year no later than October 1, a licensee shall submit to the department a proposed rate for the following calendar year for each residential care center program that the licensee operates. The licensee shall submit the proposed rate on a department-prescribed form.

Note: The rate request form is available at http://dcf.wisconsin.gov/childrenresidential/rate_regulation.htm.

(4) **REVIEW OF A PROPOSED RATE.** In reviewing a proposed rate submitted by a licensee under sub. (3), the department shall consider all of the following:

(a) Whether the proposed rate exceeds the maximum rate determined by the department under sub. (2).

(b) The residential care center's most recent cost and service report under sub. (1) (a).

(c) The residential care center's most recent audit report under sub. (1) (b).

(d) Whether the residential care center's reported costs are within a range of similar costs reported by other residential care centers for similar items and services.

(e) The residential care center's per client rate in previous years.

(f) Changes in the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, for the 12 months ending on June 30 of the year in which the proposed rate is submitted.

(g) Changes in the consumer price index for all urban consumers, U.S. city average, for the medical care group, as determined by the U.S. department of labor, for the 12 months ending on June 30 of the year in which the proposed rate is submitted.

(h) Changes in the allowable costs of residential care centers based on current actual cost data or documented projections of costs.

(i) Changes in program utilization that affect the per client rate.

(j) Changes in the department's expectations relating to service delivery.

(k) Changes in service delivery proposed by a residential care center and agreed to by the department.

(L) The loss of any source of revenue that had been used to pay expenses, resulting in a lower per client rate for services.

(m) Whether the residential care center is accredited by a national accrediting body that has developed child welfare standards.

(n) Changes in any state or federal laws, rules, or regulations that result in any change in the cost of providing services, including any changes in the minimum wage, as defined in s. 49.141 (1) (g), Stats.

(o) Competitive factors.

(p) The availability of funding to pay for the services to be provided under the proposed rate.

(5) **RATE APPROVAL.** (a) Each year no later than November 1, the department shall notify each licensee who submitted all information as required under subs. (1) and (3) of the approved per client rate for the residential care center's program for the following year.

Note: The notification will be sent to the electronic mail address that the licensee has provided to the department.

(b) If the department determines that a proposed rate submitted under sub. (3) is appropriate based on the factors in sub. (4), the department shall approve the proposed rate.

(c) If the department determines that a proposed rate submitted under sub. (3) is not appropriate based on the factors in sub. (4), the department shall negotiate with a licensee to determine an agreed to rate. The department's approved rate under par. (a) following negotiations shall be based on the factors in sub. (4) and additional relevant information presented during negotiations.

(6) **NONCOMPLIANCE.** If a licensee does not submit all information as required under subs. (1) and (3), the department may order a rate.

DCF 52.665 Rates effective July 1, 2011. (1) This section applies to the procedures for determining the per client rates that a residential care center may charge for services provided July 1, 2011, to December 31, 2011, for a child who is first placed in a residential care center or who is placed in a new residential care center on or after July 1, 2011.

(2) The department shall notify licensees no later than March 1, 2011, of the per client rate that no residential care center may exceed under s. DCF 52.66 (2).

(3) A licensee shall submit information required under s. DCF 52.66 (1) and (3) no later than April 29, 2011, except a licensee who has already submitted the residential care center's audit report for fiscal year 2010 is not required to resubmit the audit report.

(4) In reviewing a licensee's proposed rate based on the factors in s. DCF 52.66 (4), the department shall consider changes in the consumer price index under s. DCF 52.66 (4) (f) and (g) from July 1, 2009, to June 30, 2010.

(5) No later than June 1, 2011, the department shall notify each licensee who submitted all information as required under sub. (3) of the licensee's approved per client rate for services provided July 1, 2011, to December 31, 2011, for a child who is first placed in a residential care center or who is placed in a new residential care center on or after July 1, 2011.

Note: The notification will be sent to the electronic mail address that the licensee has provided to the department.

(6) If a licensee does not submit all information as required under sub. (3), the department may order a rate.

DCF 52.67 Rate resolution. (1) **MEDIATION.** (a) If a licensee has negotiated with the department under s. DCF 52.66 (5) (c) and does not agree to the department's approved rate under s. DCF 52.66 (5) (a), the licensee may request that the department and the licensee engage in mediation. A licensee shall send a request for mediation within 5 business days after the date of the notice in s. DCF 52.66 (5) (a). The request shall be sent by electronic mail to an address specified by the department.

Note: Requests for mediation should be sent to DCFCWLRateReg@wisconsin.gov.

(b) The department shall notify the licensee of the date of the mediation no later than 10 working days after receiving the request under par. (a).

(c) The issues discussed in the mediation shall be limited to the factors in s. DCF 52.66 (4).

(2) **ORDER A RATE.** If after mediation a rate is not agreed to, the department shall order a rate after considering the factors in s. DCF 52.66 (4) and relevant information presented during negotiation and mediation.

(3) **CONTESTED RATE.** (a) A licensee may appeal the rate ordered by the department under sub. (2) as a contested case under ch. 227, Stats. A request for hearing may be submitted to the division of hearing and appeals within 30 days after the date of the order.

Note: Requests for hearing may be sent to the Division of Hearings and Appeals, PO Box 7885, Madison, WI 53707.

(b) The basis for a request for hearing shall be limited to the factors in s. DCF 52.66 (4).

(c) The division of hearings and appeals shall notify the parties in writing at least 10 days before the hearing of the date, time, and location of the hearing and the procedures to be followed.

DCF 52.68 Extraordinary payments. (1) A licensee may request that a county pay an extraordinary payment in addition to the rate established under ss. DCF 52.64 to 52.67 for a specific child in care. A request for a child-specific extraordinary payment may be approved by the county and shall be reviewed by the department.

(2) A licensee may request and a county may approve a child-specific extraordinary payment if all of the following conditions are met:

(a) The child has service needs that are not accounted for in the maximum allowable rate determined by the department under s. DCF 52.66 (2).

(b) The child's service needs are not paid for by another source.

(c) The extraordinary payment will not be used to cover expenses that are a disallowable cost under s. DCF 52.65.

(3) A licensee shall submit a request for an extraordinary payment to the county on a form prescribed by the department. The request shall be dated and signed and include all of the following:

(a) Name of the residential care center program, licensee, and any authorized representative.

(b) Name of the child for whom an extraordinary payment is being requested.

(c) Amount and time period.

(d) A rationale for the request that includes all of the following:

1. An explanation of the child's service needs.

2. The amount of money that the residential care center program is currently spending to address the child's needs.
3. Any services that are not being provided due to economic constraints.
4. Documentation of the need for additional services by a person with expertise in the child's type of needs.
5. How additional dollars would be allocated and the means by which additional services would be provided.

Note: An extraordinary payment request form is available at http://dcf.wisconsin.gov/childrenresidential/rate_regulation.htm.

(4) The county shall approve or deny the request or recommend an alternative to meet the child's needs within 10 working days after receipt of the request form. The county shall send a copy of the provider request, the signed and dated county determination, and the county's justification for the determination to the department within 20 days of the approval or non-approval of the request.

Note: Required information should be sent to Department of Children and Families, Division of Safety and Permanence, Extraordinary Payments Panel, 201 E. Washington Avenue, P.O. Box 8916, Madison WI 53708-8916.

(5) A licensee may not appeal the denial of a request for an extraordinary payment under this section.

DCF 52.69 Advisory committee. The department shall convene the rate regulation advisory committee under s. 49.343 (5), Stats., at regular intervals to consult with the department on items in s. 49.343 (5) (a) to (c).

SECTION 19. DCF 54.01 (1) and (3) are amended to read:

DCF 54.01 Introduction. (1) PURPOSE. The purpose of this chapter is to protect and promote the health, safety and welfare of children in the care of child-placing agencies and to establish the administrative rate that a child-placing agency may charge for services for foster homes with a Level 3 or 4 certification.

(3) EXCEPTIONS TO RULES. The department may make exceptions to any ~~of the rules for licensing child-placing agencies~~ nonstatutory provision of this chapter when the department is assured that granting such exceptions is not detrimental to the health, safety and welfare of children. A request for an exception shall be in writing, justify the reason for requesting an exception, and describe an alternative that meets the intent of the requirement.

SECTION 20. DCF 54.01 (4) (a) is renumbered DCF 54.01 (4) (am).

SECTION 21. DCF 54.01 (4) (a) and (gm) are created to read:

DCF 54.01 (4) (a) "Administrative rate" means the difference between the rate charged by a child-placing agency to a purchaser of services for a foster home with a Level 3 or 4 certification and the rate determined under s. DCF 56.23 that is paid by the child-placing agency to the foster parent for the care and maintenance of a child placed in the foster home.

Note: A purchaser of services may pay a foster parent for the care and maintenance of a child directly.

(gm) "Foster home with a Level 3 or 4 certification" means a facility operated by a person licensed under s. 48.62 (1), Stats., and certified under s. DCF 56.13 (5) or (6).

SECTION 22. DCF 54.02 (3) (c) 7. is created to read:

DCF 54.02 (3) (c) 7. A proposed per client administrative rate that the child-placing agency will charge for services for foster homes with a Level 3 or 4 certification in the current year and a proposed budget with the same cost categories as the department's cost and service report under s. DCF 54.66 (1) (a).

SECTION 23. DCF 54.04 (1) (a) is amended to read:

DCF 54.04 (1) (a) The agency shall provide services to children who need and seek its care without discrimination on the basis of race or cultural identification, sex, sexual orientation, age, creed, ancestry, disability, political affiliations, religious beliefs, color, or national origin.

SECTION 24. DCF 54.06 (title) is amended to read:

DCF 54.06 (title) Records, inspections, and reports.

SECTION 25. DCF 54.06 (4) to (8) are created to read:

DCF 54.06 (4) INSPECTION OF PREMISES. The department may visit and inspect a child-placing agency and shall be given unrestricted access to the premises. During this inspection, a licensee shall provide all of the following:

- (a) Any documentation of child-placing agency operations requested by the department.

(b) Any agency records on a child or a foster home requested by the department.

(5) **DOCUMENTATION OF STAFFING.** (a) A licensee shall maintain and retain staff payroll records for five years.

(6) **REQUESTS FOR INFORMATION.** A licensee shall promptly respond to requests for information from the department or any other governmental agency with statutory authority to see the information.

(7) **CURRENT AND ACCURATE.** A licensee shall ensure that information that the licensee submits to or shares with the department or any other governmental agency is current and accurate.

(8) **FINANCIAL RECORDS AND AUDITS.** (a) A licensee shall arrange for an annual audit report by a certified public accountant in accordance with department guidelines.

Note: For further information, contact the Department of Children and Families, Bureau of Finance, 201 E. Washington Avenue, P.O. Box 8916, Madison WI 53708-8916 or (608) 267-3905.

(b) A licensee shall establish and maintain an accounting system that accurately identifies income and disbursements for each child by the cost categories in the cost and service report in s. DCF 54.09 (1) (a).

(c) A licensee shall be responsible for the secure and judicious use of the funds of the group home. Policies and practices shall be in accord with sound budgeting, disbursement, and audit control procedures.

(d) A licensee shall maintain a system of business management and staffing to ensure complete and accurate accounts, books, and records are maintained.

(e) Upon request, a licensee shall provide the department with financial information about the child-placing agency.

SECTION 26. DCF 54.065 to 54.12 are created to read:

DCF 54.065 Department memos. A licensee shall register to receive department memos on child welfare licensing and child welfare policy by electronic mail. A licensee shall submit a new registration if the licensee's electronic mail address changes.

Note: Register at the department's website <http://dcf.wisconsin.gov/memos/signup.htm> and select Child Welfare Licensing and Child Welfare Policy Memos.

DCF 54.07 Rate determination. (1) The department shall determine the maximum per client administrative rate that each child-placing agency may charge for the administrative portion of its services for foster homes with a Level 3 or 4 certification based on the following:

(a) A maximum per client administrative rate determined by the department that no child-placing agency may exceed.

(b) A per client administrative rate that the department determines is appropriate for each child-placing agency program based on the reasonable and necessary costs of the services provided by that child-placing agency.

(2) A child-placing agency shall charge all purchasers the same rate for the same services.

DCF 54.08 Disallowable costs. (1) In determining rates under this subchapter, the department may not consider costs incurred for any purpose that is disallowable under applicable federal regulations and cost circulars, including 45 CFR Part 74, 45 CFR Part 92, 48 CFR Part 31, OMB Circular No. A-87, and OMB Circular A-122.

(2) A licensee may not use rate payments for any purpose that is disallowable under applicable federal regulations and cost circulars, including 45 CFR Part 74, 45 CFR Part 92, 48 CFR Part 31, OMB Circular No. A-87, and OMB Circular A-122.

DCF 54.09 Rate methodology. (1) **COST AND SERVICE INFORMATION.** Each year by July 1, a licensee shall submit the following information to the department:

(a) A cost and service report in which the licensee reports the child-placing agency's costs, types of services provided, and number of children served in the previous year for services provided for foster homes with a Level 3 or 4 certification. The report shall be submitted on a department-prescribed form.

Note: The cost and service report form is available at http://dcf.wisconsin.gov/childrenresidential/rate_regulation.htm.

(b) The child-placing agency's most recent audit report under s. DCF 54.06 (10) (a).

(c) Notwithstanding par. (a), a licensee who submits a cost and service report by April 29, 2011, under s. DCF 54.095 is not required to submit another cost and service report in 2011.

Note: The Department will use the same cost and service report for both 2011 and 2012 rates.

(2) **MAXIMUM ALLOWABLE RATE.** Each year no later than September 1, the department shall notify licensees of the per client administrative rate that no child-placing agency may exceed for services provided in the following calendar year.

(3) PROPOSED RATES. Each year no later than October 1, a licensee shall submit to the department a proposed rate for the following calendar year for each child-placing agency program that the licensee operates. The licensee shall submit the proposed rate on a department-prescribed form.

Note: The rate request form is available at http://dcf.wisconsin.gov/childrenresidential/rate_regulation.htm.

(4) REVIEW OF A PROPOSED RATE. In reviewing a proposed rate submitted by a licensee under sub. (3), the department shall consider all of the following:

- (a) Whether the proposed rate exceeds the maximum rate determined by the department under sub. (2).
- (b) The child-placing agency's most recent cost and service report under sub. (1) (a).
- (c) The child-placing agency's most recent audit report under sub. (1) (b).
- (d) Whether the child-placing agency's reported costs are within a range of similar costs reported by other child-placing agencies for similar items and services.
- (e) The child-placing agency's per client administrative rate in previous years.
- (f) Changes in the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, for the 12 months ending on June 30 of the year in which the proposed rate is submitted.
- (g) Changes in the consumer price index for all urban consumers, U.S. city average, for the medical care group, as determined by the U.S. department of labor, for the 12 months ending on June 30 of the year in which the proposed rate is submitted.
- (h) Changes in the allowable costs of child-placing agencies based on current actual cost data or documented projections of costs.
- (i) Changes in program utilization that affect the per client administrative rate.
- (j) Changes in the department's expectations relating to service delivery.
- (k) Changes in service delivery proposed by a child-placing agency and agreed to by the department.
- (L) The loss of any source of revenue that had been used to pay expenses, resulting in a lower per client administrative rate for services.
- (m) Whether the child-placing agency is accredited by a national accrediting body that has developed child welfare standards.
- (n) Changes in any state or federal laws, rules, or regulations that result in any change in the cost of providing services, including any changes in the minimum wage, as defined in s. 49.141 (1) (g), Stats.
- (o) Competitive factors.
- (p) The availability of funding to pay for the services to be provided under the proposed rate.

(5) RATE APPROVAL. (a) Each year no later than November 1, the department shall notify each licensee who submitted all information as required under subs. (1) and (3) of the approved per client administrative rate for the child-placing agency for the following year.

Note: The notification will be sent to the electronic mail address that the licensee has provided to the department.

(b) If the department determines that a proposed rate submitted under sub. (3) is appropriate based on the factors in sub. (4), the department shall approve the proposed rate.

(c) If the department determines that a proposed rate submitted under sub. (3) is not appropriate based on the factors in sub. (4), the department shall negotiate with a licensee to determine an agreed to rate. The department's approved rate under par. (a) following negotiations shall be based on the factors in sub. (4) and additional relevant information presented during negotiations.

(6) NONCOMPLIANCE. If a licensee does not submit all information as required under subs. (1) and (3), the department may order a rate.

DCF 54.095 Rates effective July 1, 2011. (1) This section applies to the procedures for determining the per client administrative rate that a child-placing agency may charge for services provided July 1, 2011, to December 31, 2011, for services that the agency provides for a foster home with a Level 3 or 4 certification in which a child is first placed or a child is newly placed on or after July 1, 2011.

(2) The department shall notify licensees no later than March 1, 2011, of the per client administrative rate that no child-placing agency may exceed under s. DCF 54.09 (2).

(3) A licensee shall submit information required under s. DCF 54.09 (1) and (3) no later than April 29, 2011, except a licensee who has already submitted the child-placing agency's audit report for fiscal year 2010 is not required to resubmit the audit report.

(4) In reviewing a licensee's proposed rate based on the factors in s. DCF 54.09 (4), the department shall consider changes in the consumer price index under s. DCF 54.09 (4) (f) and (g) from July 1, 2009, to June 30, 2010.

(5) No later than June 1, 2011, the department shall notify each licensee who submitted a proposed rate under sub. (3) of the licensee's approved per client administrative rate for services provided July 1, 2011, to December 31, 2011, for foster homes with a Level 3 or 4 certification in which a child is first placed or is newly placed on or after July 1, 2011.

Note: The notification will be sent to the electronic mail address that the licensee has provided to the department.

(6) If a licensee does not submit all information as required under sub. (3), the department may order a rate.

DCF 54.10 Rate resolution. (1) MEDIATION. (a) If a licensee has negotiated with the department under s. DCF 54.09 (5) (c) and does not agree to the department's approved rate under s. DCF 54.09 (5) (a), the licensee may request that the department and the licensee engage in mediation. A licensee shall send a request for mediation within 5 business days after the date of the notice in s. DCF 54.09 (5) (a). The request shall be sent by electronic mail to an address specified by the department.

Note: Requests for mediation should be sent to DCFCWLRateReg@wisconsin.gov.

(b) The department shall notify the licensee of the date of the mediation no later than 10 working days after receiving a request under par. (a).

(c) The issues discussed in the mediation shall be limited to the factors in s. DCF 54.09 (4).

(2) ORDER A RATE. If after mediation a rate is not agreed to, the department shall order a rate after considering the factors in s. DCF 54.09 (4) and relevant information presented during negotiation and mediation.

(3) CONTESTED RATE. (a) A licensee may appeal the rate ordered by the department under sub. (2) as a contested case under ch. 227, Stats. A request for hearing may be submitted to the division of hearing and appeals within 30 days after the date of the order.

Note: Requests for hearing may be sent to the Division of Hearings and Appeals, PO Box 7885, Madison, WI 53707.

(b) The basis for a request for hearing shall be limited to the factors in s. DCF 54.09 (4).

(c) The division of hearings and appeals shall notify the parties in writing at least 10 days before the hearing of the date, time, and location of the hearing and the procedures to be followed.

DCF 54.11 Extraordinary payments. (1) A licensee may request that a county pay an extraordinary payment in addition to the rate established under ss. DCF 54.07 to 54.10 for a specific child in care. A request for a child-specific extraordinary payment may be approved by the county and shall be reviewed by the department.

(2) A licensee may request and a county may approve a child-specific extraordinary payment if all of the following conditions are met:

(a) The child has service needs that are not accounted for in the maximum allowable rate determined by the department under s. DCF 54.09 (2).

(b) The child's service needs are not paid for by another source.

(c) The extraordinary payment will not be used to cover expenses that are a disallowable cost under s. DCF 54.09.

(3) A licensee shall submit a request for an extraordinary payment to the county on a form prescribed by the department. The request shall be dated and signed and include all of the following:

(a) Name of the child-placing agency, licensee, and any authorized representative.

(b) Name of the child for whom an extraordinary payment is being requested.

(c) Amount and time period .

(d) A rationale for the request that includes all of the following:

1. An explanation of the child's service needs.

2. The amount of money that the child-placing agency is currently spending to address the child's needs.

3. Any services that are not being provided due to economic constraints.

4. Documentation of the need for additional services by a person with expertise in the child's type of needs.

5. How additional dollars would be allocated and the means by which additional services would be provided.

Note: An extraordinary payment request form is available at http://dcf.wisconsin.gov/childrenresidential/rate_regulation.htm.

(4) The county shall approve or deny the request or recommend an alternative to meet the child's needs within 10 working days after receipt of the request form. The county shall send a copy of the provider request, the signed and dated county determination, and the county's justification for the determination to the department within 20 days of the approval or non-approval of the request.

Note: Send the required information to the Department of Children and Families, Division of Safety and Permanence, Extraordinary Payments Panel, 201 E. Washington Avenue, P.O. Box 8916, Madison WI 53708-8916.

(5) A licensee may not appeal the denial of a request for an extraordinary payment under this section.

DCF 54.12 Advisory committee. The department shall convene the rate regulation advisory committee under s. 49.343 (5), Stats., at regular intervals to consult with the department on items in s. 49.343 (5) (a) to (c).

SECTION 27. Chapter DCF 57 (title) is amended to read:

Chapter DCF 57
GROUP FOSTER CARE HOMES

SECTION 28. DCF 57.01 is amended to read:

DCF 57.01 Authority and purpose. This chapter is promulgated under the authority of s. 48.67, Stats., to carry out licensing duties authorized under s. 48.66, Stats., and the authority of s. 49.343, Stats., to establish the per client rate that a group home may charge for its services. The purpose of this chapter is to protect and promote the health, safety and welfare of children placed in group homes and promote efficient provision of services.

SECTION 29. DCF 57.02 (note) is amended to read:

DCF 57.02 Note: Requests for an exception should be sent to the ~~regional licensing~~ field office listed in Appendix A that serves the group home.

SECTION 30. DCF 57.03 is repealed.

SECTION 31. DCF 57.04 (9m) is created to read:

DCF 57.04 (9m) “County department” or “county” means a county department of social services under s. 46.215 or 46.22, Stats.; a county department of human services under s. 46.23, Stats.; or a county department under s. 51.42 or 51.437, Stats.

SECTION 32. DCF 57.045 is created to read:

DCF 57.045 Inspections, records, and requests for information. (1) INSPECTION OF PREMISES. The department may visit and inspect a group home and shall be given unrestricted access to the premises. During this inspection, a licensee shall provide all of the following:

- (a) Any documentation of group home operations requested by the department.
- (b) Any resident records requested by the department.

(2) DOCUMENTATION OF STAFFING. (a) A licensee shall maintain the following records:

1. Written schedules of staff coverage that document the specific resident care staff that worked each shift to meet the applicable staff-to-resident ratio in s. DCF 57.21 (2) or 57.36 (5).

2. Staff payroll records.

(b) A licensee shall retain records under par. (a) for five years.

(3) REQUESTS FOR INFORMATION. A licensee shall promptly respond to requests for information from the department, a placing agency, or any other governmental agency with statutory authority to see the information.

(4) CURRENT AND ACCURATE. A licensee shall ensure that information that the licensee or group home staff submits to or shares with the department, a placing agency, or any other governmental agency is current and accurate.

SECTION 33. DCF 57.05 (1) (f) is amended to read:

DCF 57.05 Group home program and policies. (1) (f) A non-discrimination statement that indicates that the group home does not discriminate against a resident because of race or cultural identification, sex, sexual orientation, age, color, creed, ancestry, national origin, disability, political affiliations, or religious beliefs.

SECTION 34. DCF 57.05 (2) (p) is created to read:

DCF 57.05 (2) (p) For each shift of resident care staff, how all of the following will be documented:

- 1. Staff arrival and departure times.
- 2. Number and location of residents.

3. Summary of each resident's behavior and program participation during the shift.

SECTION 35. DCF 57.06 (5) is created to read:

DCF 57.06 (5) (a) Each licensed group home shall file a disaster plan with the department and any placing agency with a resident placed in the group home that would allow the department and placing agency to identify, locate, and ensure continuity of services to residents under the placement and care responsibility or supervision of the placing agency who are displaced or adversely affected by a disaster. A disaster plan shall include all of the following information:

1. Where a licensee, group home staff, and residents would go in an evacuation, including one location in the nearby area and one location out of the area.
2. Phone numbers, electronic mail addresses, and other contact information for the licensee.
3. A list of items that the licensee or group home staff will take if evacuated, including any medication and medical equipment for residents.
4. Phone numbers the licensee will call to check in with the department and placing agency.

(b) A licensee shall review the disaster plan on a quarterly basis to ensure it is current and accurate, document the quarterly review, and provide the documentation to the department upon request.

SECTION 36. DCF 57.07 and (notes) are repealed and recreated to read:

DCF 57.07 Financial records and audits. (1) A licensee shall arrange for an annual audit report by a certified public accountant in accordance with department guidelines.

Note: For further information, contact the Department of Children and Families, Bureau of Finance, 201 E. Washington Avenue, P.O. Box 8916, Madison WI 53708-8916 or (608) 267-3905.

(2) A licensee shall establish and maintain an accounting system that accurately identifies income and disbursements for each resident by the cost categories in the cost and service report in s. DCF 57.62 (1) (a).

(3) A licensee shall be responsible for the secure and judicious use of the funds of the group home. Policies and practices shall be in accord with sound budgeting, disbursement, and audit control procedures.

(4) A licensee shall maintain a system of business management and staffing to ensure complete and accurate accounts, books, and records are maintained.

(5) Upon request, a licensee shall provide the department with financial information about the group home.

SECTION 37. DCF 57.075 is created to read:

DCF 57.075 Department memos. A licensee shall register to receive department memos on child welfare licensing and child welfare policy by electronic mail. A licensee shall submit a new registration if the licensee's electronic mail address changes.

Note: Register at the department's website <http://dcf.wisconsin.gov/memos/signup.htm> and select Child Welfare Licensing and Child Welfare Policy Memos.

SECTION 38. DCF 57.12 (3) is amended to read:

DCF 57.12 (3) ~~Before any staff member or volunteer may transport a resident, the person's driving record shall be obtained, reviewed by the licensee and kept on file at the group home. A licensee shall obtain a copy annually of the driving record for each staff member or volunteer who may transport a resident and shall keep the record on file at the group home.~~ A person's whose driving record shows any one of the violations specified in s. 346.62 or 346.63, Stats., having occurred in the last 12 months may not transport a resident.

SECTION 39. DCF 57.12 (7) is repealed and recreated to read:

DCF 57.12 (7) (a) No licensee or person acting on behalf of a licensee may transport any resident under the age of 8 years or less than 80 pounds in weight in any private motor vehicle unless the following conditions are met, as required in s. 347.48 (4), Stats.:

1. Each resident who is less than one year old or who weighs less than 20 pounds being transported in a vehicle shall be properly seated and restrained in a rear-facing individual child car safety seat in the back seat of the vehicle.
2. Each resident who is at least one year old but less than 4 years old or who weighs at least 20 pounds but less than 40 pounds shall be properly restrained in a forward-facing individual child car safety seat in the back seat of the vehicle.
3. Each resident who is at least 4 years old but less than 8 years old, who weighs at least 40 pounds but not more than 80 pounds, or who is 4 feet 9 inches tall or less, shall be properly restrained in a shoulder-positioning child booster seat.

(b) Each resident who is not required to be in an individual child car safety seat or booster seat when being transported shall be properly restrained by a seat belt, except as provided in s. 347.48 (2m), Stats., and ch. Trans 315. Seat belts may not be shared.

SECTION 40. DCF 57.12 (8) is repealed.

SECTION 41. DCF 57.13 (4), (5) (note), (10) (a) (note), and (11) (note) are amended to read:

DCF 57.13 (4) PLACEMENT OF JUVENILE OFFENDERS. The group home shall notify the ~~regional licensing department field~~ office that serves the group home in writing, by phone, or facsimile within 48 hours of the admission of each serious juvenile offender as defined in s. DCF 57.04 (38) unless that is the primary client group served by the group home.

(5) Note: Form CFS 2146, Serious Incident Report, may be used to report physical restraints. The form can be obtained from the Department's website at <http://dcf.wisconsin.gov/forms/doc/CFS2146.doc> or by writing or telephoning any one of the ~~regional field~~ offices listed in Appendix A.

(10) (a) Note: The background information disclosure form (form F-82046A) may be obtained from the Department's website at ~~<http://dhs.wisconsin.gov/forms/F8/F82064.pdf>~~ <http://dcf.wisconsin.gov> or by writing or telephoning any ~~regional licensing field~~ office listed in Appendix A.

(11) Note: Reports submitted under this section should be submitted to the ~~regional licensing field~~ office listed in Appendix A that serves the group home.

SECTION 42. DCF 57.14 (4) (a), (b), and (c) (intro.) and 3. (note) are amended to read:

DCF 57.14 Personnel requirements. (4) REQUIRED STAFF. ~~A licensee shall staff each group home with all of the following personnel:~~

(a) Program director. ~~A licensee shall staff each group home with a program director who complies with all of the following:~~

1. 'Qualifications.' ~~The~~ A program director shall be at least 21 years old, have a 4-year college degree in one of the major fields of study specified in sub. (2), and have 2 years of supervised child welfare work experience.

2. 'Program operation and development.' The program director function can be provided by a sponsoring agency. The program director or sponsoring agency shall oversee program operation and development and do all of the following:

- 1- a. Review the appropriateness of admission of each child to the group home.
- 2- b. Participate in developing, reviewing, and updating resident assessments and treatment planning.
- 3- c. Provide technical assistance to the resident care staff and agencies.
- 4- d. Periodically review and update group home policies and procedures.

(b) Group home manager. ~~A group home manager. The licensee shall staff each group home with a group home manager shall oversee who oversees~~ the day-to-day operations of the group home. The group home manager shall have the qualifications specified in par. (c). A group home manager may also function as the program director if the group home manager meets the requirements specified in par. (a).

(c) (intro.) Resident care staff ~~The licensee shall employ at least 2 resident care staff. Additional resident~~ A licensee shall staff each group home with resident care staff shall be employed in numbers sufficient to meet the staff to resident ratios specified in ss. DCF 57.21 and 57.36 (5) and for any off-premise activities. Resident care staff shall be responsible for the day-to-day care and supervision of residents and shall have at least one of the following qualifications: daily supervision of residents and direct care to residents to ensure their safety and well-being. Resident care staff shall have at least one of the following qualifications:

(c) **3. Note:** A copy of the standards of the Wisconsin Association of Child and Youth Care Professionals can be obtained from the www.wacycp.org/ or by contacting WACYCP at 161 W. Wisconsin Avenue, Milwaukee, WI 53202; telephone (414) 227-3130. Information regarding other recognized certifying authorities may be obtained by contacting any ~~regional licensing field~~ office listed in Appendix A.

SECTION 43. DCF 57.14 (4m) is created to read:

DCF 57.14 (4m) All staff members of a group home who provide care for the residents of the group home shall have current proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), Stats., achieved through instruction provided by an individual, organization, or institution of higher education that is approved under s. 46.03 (38), Stats., to provide such instruction.

SECTION 44. DCF 57.15 (2) (a) (note) and (c) (note) are amended to read:

DCF 57.15 (2) (a) Note: Forms for conducting a caregiver background check, including the background information disclosure form (form F-82064A) may be obtained from the Department's website at <http://dhs.wisconsin.gov/forms/F8/F82064.pdf> <http://dcf.wisconsin.gov> or by writing or telephoning any regional field office listed in Appendix A.

(c) Note: A HealthCheck form may be obtained by contacting the local public health department. Physical examination report forms can be obtained by contacting the ~~regional licensing field~~ office listed in Appendix A.

SECTION 45. DCF 57.21 is repealed and recreated to read:

DCF 57.21 Staff-to-resident ratios and supervision. (1) In this section, "supervision" means guidance of the behavior and activities of a resident by a staff member who is within sight or sound of a resident to ensure the safety and well-being of the resident.

(2) The staff-to-resident ratios of a group home shall be as follows:

(a) 1:5 during waking hours. A group home shall have at least one staff member awake and providing supervision for every 5 or fewer residents present in the group home during waking hours.

(b) 1:8 during sleeping hours. A group home shall have at least one staff member awake and providing supervision during sleeping hours.

(3) The staff-to-resident ratios in sub. (2) and s. DCF 57.36 (5) are the minimal staffing requirements for resident care staff. The number of resident care staff on duty shall be increased as necessary to meet the needs of residents and to ensure their safety and welfare.

(4) A volunteer may be used to meet the staff-to-resident ratio requirements in sub. (2) and s. DCF 57.36 (5) when 6 or more residents are in care if the volunteer meets the staff qualifications under s. DCF 57.14 (4) (c).

(5) No resident may be in the group home without supervision by a staff member.

(6) A licensee shall ensure that supervision is provided for each resident appropriate to the resident's age, maturity, behavior, and developmental level and sufficient to ensure the safety of all residents in the group home.

(7) A licensee shall ensure that sufficient staffing is available to provide supervision of a resident during suspensions and other extended absences from school.

SECTION 46. DCF 57.24 (note) is amended to read:

DCF 57.24 (Note): Patients' rights information and posters can be obtained ~~at the Department's website at~~ <http://dhs.wisconsin.gov/clientrights/FormsPubsPosters.htm>

SECTION 47. DCF 57.27 (1) (j) and (k) are created to read:

DCF 57.27 (1) (j) Use any mechanical restraint or equipment that restricts the movement of an resident or a portion of the resident's body as behavior intervention.

(k) Use a prone restraint that places a resident in a face down position as behavior intervention.

SECTION 48. DCF 57.27 (3) is repealed and recreated to read:

DCF 57.27 (3) PHYSICAL RESTRAINT. (a) A staff member may not use any type of physical restraint on a resident unless the resident's behavior presents an imminent danger of harm to self or others and physical restraint is necessary to contain the risk and keep the resident and others safe.

(b) A staff member shall attempt other feasible alternatives to de-escalate a resident and situation before using physical restraint.

(c) A staff member may not use physical restraint as disciplinary action, for the convenience of the staff member, or for therapeutic purposes.

(d) If physical restraint is necessary under par. (a), a staff member may only use the physical restraint in the following manner:

1. With the least amount of force necessary and in the least restrictive manner to manage the imminent danger of harm to self or others.

2. That lasts only for the duration of time that there is an imminent danger of harm to self or others.

3. That does not include any of the following:

a. Any maneuver or technique that does not give adequate attention and care to protection of the resident's head.

b. Any maneuver that places pressure or weight on the resident's chest, lungs, sternum, diaphragm, back, or abdomen causing chest compression.

c. Any maneuver that places pressure, weight, or leverage on the neck or throat, on any artery, or on the back of the resident's head or neck, or that otherwise obstructs or restricts the circulation of blood or obstructs an airway, such as straddling or sitting on the resident's torso.

d. Any type of choke hold.

e. Any technique that uses pain inducement to obtain compliance or control, including punching, hitting, hyperextension of joints, or extended use of pressure points for pain compliance.

f. Any technique that involves pushing on or into a resident's mouth, nose, or eyes, or covering the resident's face or body with anything, including soft objects, such as pillows, washcloths, blankets, and bedding.

4. Notwithstanding subd. 3. f., if a resident is biting himself or herself or other persons, a staff member may use a finger in a vibrating motion to stimulate the resident's upper lip and cause the resident's mouth to open and may lean into the bite with the least amount of force necessary to open the resident's jaw.

(e) After an episode of physical restraint, a de-briefing shall take place with the resident and staff that were involved in the physical restraint.

(f) Each staff member who uses a physical restraint or who witnesses the use of a physical restraint shall, within 24 hours of each incident, give the group home manager a written description of the incident. The group home manager shall document each incident, including date, time, and a description of the circumstances of the incident, and report the incident to the field office that serves the group home and the placing agency as required under s. DCF 57.13 (1) (c) and (5). Each description shall include all of the following:

1. The name, age, and sex of each resident involved.

2. The date, time, and location of the incident.

3. The name and job title of each staff member involved in the restraint and each staff member or volunteer who witnessed the use of the restraint.

4. Circumstances leading up to the use of restraint, the behavior that prompted the restraint, efforts made to de-escalate the situation and the alternatives to restraint that were attempted.

5. A description of the administration of the restraint, including the holds used and the reasons the holds were necessary.

6. The beginning and ending time of the restraint and how the restraint ended.

7. Behavior of the resident during and after the use of the restraint.

8. Any injuries sustained by a resident or staff member and any medical care provided, including the name and title of the person providing the care.

9. Any follow-up debriefing provided to residents and staff.

SECTION 49. DCF 57.33 (1) is amended to read:

DCF 57.33 (1) Each resident shall be provided with a separate bed. A child of a custodial parent who resides in the group home shall also have his or her own crib, bed, or bassinet as appropriate for the needs of the child and may not routinely share a bed with his or her parent.

SECTION 50. DCF 57.36 (8) is amended to read:

DCF 57.36 (8) WATER SUPPLY. The annual test of private well water under s. DCF 57.40 (3) (a) 2. shall include testing for nitrate levels. If nitrate levels are determined to be over 10 milligrams per liter, the licensee shall give notice to the ~~regional licensing~~ department field office that serves the group home within 48 hours.

SECTION 51. DCF 57.37 (8) is amended to read:

DCF 57.37 (8) WATER. If an infant under 6 months old is in care, the annual test of private well water required under s. DCF 57.40 (3) (a) 2., shall include testing for nitrate levels. If nitrate levels are determined to be over 10 milligrams per liter, the licensee shall give notice to the ~~regional licensing~~ department field office that serves the group home within 48 hours.

SECTION 52. DCF 57.37 (11) is repealed.

SECTION 53. DCF 57.38 (1) (g) (note) is amended to read:

DCF 57.38 (1) (g) Note: Form CFS 872A, Information for Foster Parents –Part A and form CFS 872B, Information for Foster Parents –Part B can be found on the department's website at <http://dcf.wisconsin.gov/forms/doc/CFS0872a.doc> and CFS0872b.doc or by telephoning any ~~regional~~ field office listed in Appendix A.

SECTION 54. DCF 57.40 (7) is created to read:

DCF 57.40 (7) STAIRWAYS. Each stairway shall have a handrail.

SECTION 55. DCF 57.42 (4) is amended to read:

DCF 57.42 (4) FIRE SAFETY INSPECTION. The licensee shall have an annual fire safety inspection. The results of the inspection shall be reported to the regional licensing department field office that serves the group home as required under s. DCF 57.13 (9).

SECTION 56. DCF 57.425 is created to read:

DCF 57.425 Carbon monoxide detector. (1) A group home in a one-unit or two-unit building shall have a functional carbon monoxide detector installed in the basement and on each floor level, except the attic, garage, or storage area of each unit, in accordance with the requirements of s. 101.647, Stats.

Note: A one-unit building is a single family residence. A two-unit building is a duplex or two-flat.

(2) A group home in a building with at least 3 units shall have one or more functional carbon monoxide detectors installed in accordance with the requirements of s. 101.149, Stats.

SECTION 57. DCF 57.49 (1) (im) is created to read:

DCF 57.49 (1) (im) A proposed per client rate that the group home will charge for services provided in the current year and a proposed budget with the same cost categories as the department's cost and service report under s. DCF 57.66 (1) (a).

SECTION 58. DCF 57.49 (1) (note) is amended to read:

DCF 57.49 (1) Note: A copy of the application form CFS 375 may be requested in writing or by phone from the appropriate regional licensing field office listed in Appendix A. The completed application and license fee should be returned to the regional field office from which the application was received.

SECTION 59. DCF 57.515 (note) is amended to read:

DCF 57.515 Note: A request for approval for an amended license may be sent to the regional field office that serves the group home.

SECTION 60. DCF 57. 58 (2) (note) and (3) are amended to read:

DCF 57.58 (2) Note: A request for hearing can be submitted by mail or hand-delivered to the Division of Hearings and Appeals, at 5005 University Ave., Room 201, Madison, WI 53705-5400, or faxed to the Division at (608) 264-9885. A copy of the request should be sent to the regional licensing field office listed in Appendix A that serves the group home.

(3) An appeal of a denial or revocation based on a certification by the department of ~~workforce development~~ of failure to pay court-ordered payments of support or failure to comply with a subpoena or warrant issued by the department of ~~workforce development~~ shall be filed pursuant to s. 49.857, Stats.

**SECTION 61. Chapter DCF 57 Subchapter VII—Rate Regulation and DCF 57.60 to 57.65 are created to read:
Subchapter VII—Rate Regulation**

DCF 57.60 Rate determination. (1) The department shall determine the maximum per client rate that each group home may charge for costs associated with room, board, administration, service provision, and oversight of youth in the group home based on all of the following:

(a) A maximum per client rate determined by the department that no group home may exceed.

(b) A per client rate that the department determines is appropriate for each group home based on the reasonable and necessary costs of the services provided by that group home.

(2) A group home shall charge all purchasers the same rate for the same services.

DCF 57.61 Disallowable costs. (1) In determining rates under this subchapter, the department may not consider costs incurred for any purpose that is disallowable under applicable federal regulations and cost circulars, including 45 CFR Part 74, 45 CFR Part 92, 48 CFR Part 31, OMB Circular No. A-87, and OMB Circular A-122.

(2) A licensee may not use rate payments for any purpose that is disallowable under applicable federal regulations and cost circulars, including 45 CFR Part 74, 45 CFR Part 92, 48 CFR Part 31, OMB Circular No. A-87, and OMB Circular A-122.

DCF 57.62 Rate methodology. (1) COST AND SERVICE INFORMATION. Each year by July 1, a licensee shall submit the following information to the department:

(a) A cost and service report in which the licensee reports the group home's costs, types of services provided, and number of children served in the previous year. The report shall be submitted on a department-prescribed form.

Note: The cost and service report form is available at http://dcf.wisconsin.gov/childrenresidential/rate_regulation.htm.

(b) The group home's most recent audit report under s. DCF 57.07 (1).

(c) Notwithstanding par. (a), a licensee who submits a cost and service report by April 29, 2011, under s. DCF 57.625 (3) is not required to submit another cost and service report in 2011.

Note: The Department will use the same cost and service report for both 2011 and 2012 rates.

(2) MAXIMUM ALLOWABLE RATE. Each year no later than September 1, the department shall notify licensees of the per client rate that no group home may exceed for services provided in the following calendar year.

(3) PROPOSED RATES. Each year no later than October 1, a licensee shall submit to the department a proposed rate for the following calendar year for each group home program that the licensee operates. The licensee shall submit the proposed rate on a department-prescribed form.

Note: The rate request form is available at http://dcf.wisconsin.gov/childrenresidential/rate_regulation.htm.

(4) REVIEW OF A PROPOSED RATE. In reviewing a proposed rate submitted by a licensee under sub. (3), the department shall consider all of the following:

(a) Whether the proposed rate exceeds the maximum rate determined by the department under sub. (2).

(b) The group home's most recent cost and service report under sub. (1) (a).

(c) The group home's most recent audit report under sub. (1) (b).

(d) Whether the group home's reported costs are within a range of similar costs reported by other group homes for similar items and services.

(e) The group home's per client rate in previous years.

(f) Changes in the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, for the 12 months ending on June 30 of the year in which the proposed rate is submitted.

(g) Changes in the consumer price index for all urban consumers, U.S. city average, for the medical care group, as determined by the U.S. department of labor, for the 12 months ending on June 30 of the year in which the proposed rate is submitted.

(h) Changes in the allowable costs of group homes based on current actual cost data or documented projections of costs.

(i) Changes in program utilization that affect the per client rate.

(j) Changes in the department's expectations relating to service delivery.

(k) Changes in service delivery proposed by a group home and agreed to by the department.

(L) The loss of any source of revenue that had been used to pay expenses, resulting in a lower per client rate for services.

(m) Whether the group home is accredited by a national accrediting body that has developed child welfare standards.

(n) Changes in any state or federal laws, rules, or regulations that result in any change in the cost of providing services, including any changes in the minimum wage, as defined in s. 49.141 (1) (g), Stats.

(o) Competitive factors.

(p) The availability of funding to pay for the services to be provided under the proposed rate.

(5) RATE APPROVAL. (a) Each year no later than November 1, the department shall notify each licensee who submitted the information as required under subs. (1) and (3) of the group home's approved per client rate for the following year.

Note: The notification will be sent to the electronic mail address that the licensee has provided to the department.

(b) If the department determines that a proposed rate submitted under sub. (3) is appropriate based on the factors in sub. (4), the department shall approve the proposed rate.

(c) If the department determines that a proposed rate submitted under sub. (3) is not appropriate based on the factors in sub. (4), the department shall negotiate with a licensee to determine an agreed to rate. The department's approved rate under par. (a) shall be based on the factors in sub. (4) and additional relevant information presented during negotiations.

(6) **NONCOMPLIANCE.** If a licensee does not submit all information as required under subs. (1) and (3), the department may order a rate.

DCF 57.625 Rates effective July 1, 2011. (1) This section applies to the procedures for determining the per client rates that a group home may charge for services provided July 1, 2011, to December 31, 2011, for a child who is first placed in a group home or who is placed in a new group home on or after July 1, 2011.

(2) The department shall notify licensees no later than March 1, 2011, of the per client rate that no group home may exceed under s. DCF 57.62 (2).

(3) A licensee shall submit information required under s. DCF 57.62 (1) and (3) no later than April 29, 2011, except a licensee who has already submitted the group home's audit report for fiscal year 2010 is not required to resubmit the audit report.

(4) In reviewing a licensee's proposed rate based on the factors in s. DCF 57.62 (4), the department shall consider changes in the consumer price index under s. DCF 57.62 (4) (f) and (g) from July 1, 2009, to June 30, 2010.

(5) No later than June 1, 2011, the department shall notify each licensee who submitted the information required under sub. (3) of the licensee's approved per client rate for services provided July 1, 2011, to December 31, 2011, for a child who is first placed in a group home or who is placed in a new group home on or after July 1, 2011.

Note: The notification will be sent to the electronic mail address that the licensee has provided to the department.

(6) If a licensee does not submit all information as required under sub. (3), the department may order a rate.

(7) The procedures in this section on determining rates for services provided in 2011 do not apply to family-operated group homes. The procedures in ss. DCF 57.60 to 57.64 on determining rates for services provided beginning January 1, 2012, shall apply to family-operated group homes.

DCF 57.63 Rate resolution. (1) **MEDIATION.** (a) If a licensee has negotiated with the department under s. DCF 57.62 (5) (c) and does not agree to the department's approved rate under s. DCF 57.62 (5) (a), the licensee may request that the department and the licensee engage in mediation. A licensee shall send a request for mediation within 5 business days after the date of the notice in s. DCF 57.62 (5) (a). The request shall be sent by electronic mail to an address specified by the department.

Note: Requests for mediation should be sent to DCFCWLRateReg@wisconsin.gov.

(b) The department shall notify the licensee of the date of the mediation no later than 10 working days after receiving the request under par. (a).

(c) The issues discussed in the mediation shall be limited to the factors in s. DCF 57.62 (4).

(2) **ORDER A RATE.** If after mediation a rate is not agreed to, the department shall order a rate after considering the factors in s. DCF 57.62 (4) and relevant information presented during negotiation and mediation.

(3) **CONTESTED RATE.** (a) A licensee may appeal the rate ordered by the department under sub. (2) as a contested case under ch. 227, Stats. A request for hearing may be submitted to the division of hearing and appeals within 30 days after the date of the order.

Note: Requests for hearing may be sent to the Division of Hearings and Appeals, PO Box 7885, Madison, WI 53707

(b) The basis for a request for hearing shall be limited to the factors in s. DCF 57.62 (4).

(c) The division of hearings and appeals shall notify the parties in writing at least 10 days before the hearing of the date, time, and location of the hearing and the procedures to be followed.

DCF 57.64 Extraordinary payments. (1) A licensee may request that a county pay an extraordinary payment in addition to the rate established under ss. DCF 57.60 to 57.63 for a specific child in care. A request for a child-specific extraordinary payment may be approved by the county and shall be reviewed by the department.

(2) A licensee may request and a county may approve a child-specific extraordinary payment if all of the following conditions are met:

(a) The child has service needs that are not accounted for in the maximum allowable rate determined by the department under s. DCF 57.62 (2).

(b) The child's service needs are not paid for by another source.

(c) The extraordinary payment will not be used to cover expenses that are a disallowable cost under s. DCF 57.61.

(3) A licensee shall submit a request for an extraordinary payment to the county on a form prescribed by the department. The request shall be dated and signed and include all of the following:

- (a) Name of the group home program, licensee, and any authorized representative.
- (b) Name of the child for whom an extraordinary payment is being requested.
- (c) Amount and time period.
- (d) A rationale for the request that includes all of the following:
 - 1. An explanation of the child's service needs.
 - 2. The amount of money that the group home program is currently spending to address the child's needs.
 - 3. Any services that are not being provided due to economic constraints.
 - 4. Documentation of the need for additional services by a person with expertise in the child's type of needs.
 - 5. How additional dollars would be allocated and the means by which additional services would be provided.

Note: An extraordinary payment request form is available at http://dcf.wisconsin.gov/childrenresidential/rate_regulation.htm.

(4) The county shall approve or deny the request or recommend an alternative to meet the child's needs within 10 working days after receipt of the request form. The county shall send a copy of the provider request, the signed and dated county determination, and the county's justification for the determination to the department within 20 days of the approval or non-approval of the request.

Note: Send the required information to the Department of Children and Families, Division of Safety and Permanence, Extraordinary Payments Panel, 201 E. Washington Avenue, P.O. Box 8916, Madison WI 53708-8916.

(5) A licensee may not appeal the denial of a request for an extraordinary payment under this section.

DCF 57.65 Advisory committee. The department shall convene the rate regulation advisory committee under s. 49.343 (5), Stats., at regular intervals to consult with the department on items in s. 49.343 (5) (a) to (c).

SECTION 62. EFFECTIVE DATE. This rule shall take effect upon publication as provided in s. 227.24 (1) (c), Stats.